

Message Text

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ACTION EA-10

INFO OCT-01 ISO-00 AGR-05 COA-01 HEW-02 COME-00 SP-02

AID-05 EB-07 NSC-05 RSC-01 CIEP-01 TRSE-00 SS-15

STR-01 OMB-01 CEA-01 CIAE-00 DODE-00 PM-03 H-01

INR-05 L-02 NSAE-00 PA-01 PRS-01 USIA-06 /077 W

----- 051440

R 210240Z NOV 74

FM USLO PEKING

TO SECSTATE WASHDC 2756

INFO AMCONSUL HONG KONG

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E.O. 11652: N/A

TAGS: ETRD, EEWT, CH, US

SUBJECT: PRC FROZEN SHRIMP REJECTION PROBLEM

REF: HONG KONG 12315

1. AT THE RECENTLY CONCLUDED CANTON FAIR, DURING FOUR DAYS OF INTENSE NEGOTIATIONS WITH SEABROOK FOODS PRESIDENT BERGER, AND IN SUBSEQUENT MEETINGS WITH THE FIRM'S HONG KONG AGENT Y.Y. WONG, THE CHINA NATIONAL CEREALS, OILS AND FOODSTUFFS IMPORT AND EXPORT CORPORATION (CEROILFOOD) REFUSED TO AGREE TO SEABROOK'S CLAIM FOR \$750,000 WORTH OF FROZEN SHRIMP REJECTED BY USDA. (AT ONE POINT BERGER EXPRESSED WILLINGNESS TO SETTLE FOR \$300,000.) ONE THE EVENING BEFORE HIS DEPARTURE FROM CANTON, BERGER TOLD USLO OFFICERS AT THE FAIR THAT HE WAS VERY DISCOURAGED BY THE CHINESE ATTITUDE AND WOULD URGE HIS INSURANCE COMPANY (WHICH NOW HAS TITLE TO THE SHRIMP) TO TAKE THE MATTER TO ARBITRATION. IT IS DIFFICULT THEREFORE TO UNDERSTAND BERGER'S OPTIMISTIC ACCESSIONMENT OF THE PROBLEM AS REPORTED REFTEL.

2. IN CONVERSATIONS WITH BOTH BERGER AND WONG, CEROILFOOD

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REPS TOOK A TOUGH POSITION BASED ON A STRICT INTERPRETATION OF

THEIR CONTRACTUAL OBLIGATIONS. POINTING TO THE TERMS OF THE CONTRACT, THE CHINESE MAINTAINED THAT INSPECTION BY THE CHINESE COMMODITY INSPECTION BOARD (CCIB) AT TIME OF SHIPMENT WAS FINAL. SINCE THE SHRIMP WERE APPROVED BY CCIB, ANY DECOMPOSITION FOUND BY USDA MUST HAVE OCCURED ENROUTE. WHILE THIS WAS UNFORTUNATE, THE CHINESE SAID THEY HAD NO RESPONSIBILITY UNDER THE TERMS OF THE CONTRACT. CEROILFOOD WOULD NOT TAKE BACK THE SHRIMP, NOR WOULD IT COMPENSATE THE INSURANCE COMPANY TOWARD WHICH IT HAD NO CONTRACTUAL OBLIGATIONS.

3. THE CHINESE ALSO MADE IT CLEAR THEY HAD NO INTENTION OF COMPENSATING BERGER FOR MORE THAN A FRACTION OF HIS TOTAL CLAIM THROUGH DISCOUNTS ON NEW PURCHASES. AS A "SHOW OF GOOD FAITH" CEROILFOOD OFFER A 7 PERCENT DISCOUNT ON BERGER'S PROPOSED NEW ORDER ON ONE MILLION POUNDS OF SHRIMP (THIS WOULD BE WORTH ABOUT \$40,000), BUT SAID HIS SUGGESTION FOR \$300,000 COMPENSATION WAS OUT OF THE QUESTION. THEY ALSO PROMISED TO IMPROVE THEIR INSPECTION, AND SELL ONLY TOP QUALITY SHRIMP WHICH THEY WERE CERTAIN WOULD MEET USDA APPROVAL.

4. FOLLOWING BERGER'S DEPARTURE FROM CANTON, WONG HAD TWO ADDITIONAL MEETINGS WITH CEROILFOOD AT WHICH OTHER POSSIBLE SOLUTIONS TO THE PROBLEM WERE DISCUSSED BUT NO AGREEMENT WAS REACHED. WONG SAID THE CHINESE PROPOSED THE FOLLOWING POSSIBLE OPTIONS: (1) CHINA SELLING CHRIMP CIF AND THUS TAKING RESPONSIBILITY FOR THE INSURANCE; (2) ROUTING FUTURE SALES THROUGH WONG'S HONG KONG FIRM WITH THE PROMISE THAT CHINA WOULD TAKE BACK ANY REJECTED SHRIMP; (3) COMPENSATING BERGER THROUGH SMALL DISCOUNTS ON A NUMBER OF FUTURE PURCHASES. WONG DOUBTED THAT ANY OF THESE WERE OFFERED SERIOUSLY, AND TOLD USLO OFFICERS HE BELIEVED THAT ARBITRATION MIGHT BE THE ONLY SOLUTION. WONG ALSO SAID THAT THE COMMITMENT BERGER THOUGHT HE RECEIVED FOR A DECISION IN SEVEN DAYS (SEE REFTTEL) WAS A GARBLE IN TRANSLATION AND THE ONLY PROMISE THE CHINESE REALLY MADE WAS TO CONTINUE TO "WORK HARD" WHILE URGING WONG AND BERGER TO DO THE SAME.

5. COMMENT: BENEATH ALL THE RHETORIC, THE CHINESE FACE LIMITED OFFICIAL USE

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TWO BASIC PROBLEMS WHICH MAKE IT DIFFICULT FOR THEM TO RESOLVE THE DISPUTE. THE FIRST IS THE LARGE SIZE OF THE CLAIM. THE SECOND IS THAT COMPENSATION TO BERGER WOULD BE AN ADMISSION THAT THE CCIB INSPECTION IS NOT FINAL, AND THIS WOULD HAVE IMPLICATIONS FOR OTHER COMMODITIES. DURING THE FAIR, ANOTHER US FIRM VON SHEVEN AND COMPANY CANCELLED A CONTRACT FOR SHRIMP BECAUSE IT WAS UNABLE TO OBTAIN REJECTION INSURANCE. AS LONG AS INSURANCE COMPANIES REFUSE TO ISSUE SUCH INSURANCE, SINO-US TRADE

IN THIS ONCE PROMISING COMMODITY IS FOR ALL PRACTICAL PURPOSES
AT AND END.
BUSH

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: COMPENSATION, FOOD CONTAMINATION, IMPORTS, SHELLFISH, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 21 NOV 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: CollinP0
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974PEKING02038
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D740336-0720
From: PEKING
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19741124/aaaaattv.tel
Line Count: 118
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EA
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: HONG KONG 12315
Review Action: RELEASED, APPROVED
Review Authority: CollinP0
Review Comment: n/a
Review Content Flags:
Review Date: 22 JUL 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <22 JUL 2002 by elyme>; APPROVED <21 MAR 2003 by CollinP0>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: PRC FROZEN SHRIMP REJECTION PROBLEM
TAGS: ETRD, EEWT, CH, US, SEABROOK FOODS
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005